

Policy discussions on ADR/ODR in France: towards greater regulation for the Legaltech?

Current policy discussions on ADR/ODR in France: towards greater regulation for the *Legaltech*?

By Alexandre Biard, Erasmus University Rotterdam (postdoc researcher ERC project Building EU Civil Justice)

In April 2018, the French government published a new draft legislation aimed at reforming and modernizing the French Justice system (*Projet de loi de programmation 2018-2022 et de réforme pour la Justice*). Among other things, the proposal is likely to trigger some significant changes in the French ADR/ODR landscape, and may have important consequences for the future development of the *legaltech*. The proposal is currently discussed before the French Parliament and Senate. The following elements should be noted:

- **A generalisation of compulsory mediation** (*tentative de médiation obligatoire*) for small claims (Article 2 of the draft legislation). It should be noted that France has already launched several pilot projects with the intent to experiment compulsory mediation in several areas, including in family law and for certain administrative matters.
- **A new certification scheme for ODR platforms** (Article 3 of the draft legislation). As a result of the European Directive 2013/11/EU (the Consumer ADR Directive), France has already established a certification scheme applying to consumer ADR providers. Consumer ADR entities seeking certification must show compliance with several quality criteria listed in the Consumer ADR Directive, and transposed in France by Ordinance 2015-1033 of 20 August 2015 and two additional implementing decrees. A new *ad hoc* public entity - Commission d'Evaluation et de Contrôle de la Médiation de la Consommation (CECMC) closely linked to the General Directorate for Competition Policy, Consumer Affairs and Fraud Control (DGCCRF, a branch of the Ministry of Economy) is in charge of certifying consumer ADR providers. CECMC must also verify

that Consumer ADR providers comply with the quality criteria listed in the Directive and the national legislation on an on-going basis. Under the new draft legislation, the proposed certification scheme will apply to all ODR systems. While noticing the development of ODR services, a previous draft legislation of 25 October 2017 suggested to introduce a certification scheme for private ODR platforms, and, in parallel, also aimed to create a free public ODR system (*Service public gratuit en ligne d'aide à la résolution amiable des litiges*, see Article 8 of the proposal). However, the development of this public ODR system was finally discarded for budgetary reasons. Interestingly, whereas the initial proposal from the Government made certification non-compulsory and voluntary, amendments adopted by the French Senate have made certification compulsory for all ODR providers. Senate has also designated the Ministry of Justice as competent authority in charge of certifying ODR providers. At the time of writing, it remains unclear whether certification will ultimately be compulsory or not (an amendment from the National Assembly dated 6 November 2018 reintroduced the voluntary/non-compulsory nature of certification). A decree from the State Council (*Conseil d'Etat*) will specify the details of the certification procedure. As a general rule, to be certified, ODR platforms will have to show that they comply with data protection rules and confidentiality, and prove that they are independent, impartial, and that their procedures are fair and efficient. Importantly, rules also provide that ODR system cannot be based solely on algorithms or automated systems. In other words, human intervention will remain necessary and compulsory. If the ODR platform uses algorithms, it will have to inform parties beforehand, and will have to collect their informed consent. The draft legislation also provides that consumer ADR entities already certified by the CECMC will automatically benefit from the new certification scheme.

The draft proposal has been criticized as a step towards 'a privatisation of justice'. It remains to be seen how the new proposed certification scheme will be implemented.

More information on this topic? Don't hesitate to contact us (biard@law.eur.nl)

